

IN THE IOWA SUPREME COURT

PLANNED PARENTHOOD OF  
THE HEARTLAND AND JILL  
MEADOWS, M.D.,

Petitioners-Appellants,

v.

TERRY BRANSTAD EX REL.  
STATE OF IOWA AND IOWA  
BOARD OF MEDICINE,

Respondents-Appellees.

SUPREME COURT NO.  
\_\_\_\_\_

POLK CO. NO. EQCE081503

**APPLICATION FOR  
INTERLOCUTORY APPEAL**

COME NOW, the Petitioners-Appellants Planned Parenthood of the Heartland, Inc. (“PPH”) and Jill Meadows, M.D., by and through their attorneys, Rita Bettis and Joseph Fraioli of the American Civil Liberties Union of Iowa Foundation, and Alice Clapman, Diana Salgado, and Maithreyi Ratakonda of Planned Parenthood Federation of America, and respectfully submit this Application for Interlocutory Appeal pursuant to Iowa R. App. Pro. 6.104. *Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180 (Iowa 2005) (granting an interlocutory appeal to review the district court’s denial of a temporary injunction.) Petitioners-Appellants

request immediate, expedited review of the District Court’s denial of their Motion for a Temporary Injunction, to stay enforcement of the 72-hour mandatory delay and additional trip requirements of Section 1 of Senate File 471 (“The Act”), to be enacted and made immediately effective upon the Governor’s signature, scheduled to occur on May 5, 2017 at 8:30 a.m., which was denied by the Polk County today, on May 4, 2015. In support thereof, and for the reasons stated in their supporting brief, Petitioners state as follows:

1. The District Court erred in denying the Temporary Injunction, because an immediate temporary injunction is necessary “to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation.” Kleman v. Charles City Police Dep’t, 373 N.W.2d 90, 95 (Iowa 1985). Such relief is appropriate if the movant demonstrates a likelihood of success on the merits, a threat of irreparable injury, and that the balance of harms favors relief. See generally Opat v. Ludeking, 666 N.W.2d 597, 603–04 (Iowa 2003); Max 100 L.C. v. Iowa Realty Co., Inc., 621 N.W.2d 178, 181 (Iowa 2001).

2. Forty-four Iowa women have abortion appointments scheduled for tomorrow, Friday May 5, 2017, after the law takes effect at approximately

8:30 a.m. Absent an injunction by this Court, they will not be able to obtain the abortion procedures which they are scheduled to undergo.

3. The Act places significant new restrictions and burdens on women seeking abortions in Iowa that currently pose immediate and, for some women, serious medical risks and consequences, in addition to immediate, ongoing harms to their constitutional and legal rights.

4. The Act requires that women in the state make an additional and medically unnecessary trip to a health center to have an ultrasound and be given certain state-mandated information regarding the abortion procedure, at least 72 hours before they can obtain abortions. The Act thus imposes a medically unnecessary mandatory delay.

5. Physicians who violate the mandatory delay and additional trip requirements are subject to licensee discipline. S.F. 471 § 1 (2017) (to be codified at Iowa Code § 146A.1(3)).

6. All women who have existing appointments to obtain abortions are already immediately restrained from obtaining an abortion according to their scheduled appointment times. Currently, PPH has 44 abortion patients scheduled for Friday, May 5, including 33 medication abortion patients. It also has 11 medication abortion patients scheduled for Tuesday, May 9 and

28 abortion patients scheduled for Wednesday, May 10, including 19 medication abortion patients.

7. For some women, the delays caused by the Act can result in serious medical consequences, including the inability to obtain a medication abortion, requiring them to undergo a surgical procedure instead.

Medication abortion is medically indicated for health reasons for some women and is strongly preferred over surgical abortion by others for personal reasons. Medication abortion is more effective the earlier it is initiated, but is only available through 10 weeks dating from the woman's last menstrual period ("LMP"). The delay caused by the Act can push women past the gestational age at which medication abortion is an option. Over the past year, 30% of Petitioner-Appellant Planned Parenthood of the Heartland's ("PPH") medication abortion patients were in their ninth or tenth week of pregnancy at the time of treatment.

8. Patients who lose the ability to have a medication abortion will be forced to travel significantly farther to get a surgical abortion. That is because PPH only provides surgical abortion at two of its health centers, which are located in Des Moines and Iowa City; medication abortion is available at five additional health centers, which are spread across the state in Burlington, Cedar Falls, Council Bluffs, Bettendorf (Quad Cities), and Sioux City.

Therefore, a patient in Sioux City, for example, who loses her chance to have a local medication abortion will have to travel approximately 400 miles round-trip to Des Moines.

9. The mandatory delay requirement will also result in some women seeking a surgical abortion from being prevented from obtaining an abortion in the state altogether, because the delay will push them past the gestational age at which surgical abortions are available in the state. Surgical abortion is available at PPH's Des Moines health center, and at PPH's Iowa City health center. In the past year, PPH saw thirty patients at its Des Moines clinic who were within two weeks of the gestational age cut-off for surgical abortion there, and seventeen patients at its Iowa City health center who were within two weeks of the cut-off there. These patients will either have to travel out of state to obtain an abortion, or, if they do not have the resources to do so, carry a pregnancy to term.

10. Vulnerable groups of women will also be injured severely by these requirements including low-income women (who are at or below 110% of the federal poverty line), who make up the majority of PPH's abortion patients, as well as victims of sexual assault or domestic abuse, women who have received a diagnosis of a severe fetal anomaly, and women with

medical conditions that threaten their health but who do not fall into the narrow medical emergency exceptions stipulated in the Act.

11. The Board of Medicine has yet to promulgate the rules to administer the Act, see S.F. 471 § 1 (2017) (to be codified at Iowa Code § 146A.1(5)), nor has the Department of Public Health produced the materials required by the Act, id. (to be codified at § 146A.1(1)(d), (2)), leaving PPH in the position of lacking critical information about how to interpret the Act.

12. As the evidence in the record supporting the Petitioners-Appellants' Motion for a Temporary Injunction below demonstrates, the Act fails strict and heightened scrutiny, and imposes an undue burden on Iowa women seeking to have an abortion. Like the telemedicine abortion ban recently struck down by this Court in *Planned Parenthood of the Heartland*, the Act “places an undue burden on a woman’s right to terminate her pregnancy,” id., 865 N.W.2d at 269, because there is no evidence that it actually advances any valid state interest and because it unquestionably will make it “more challenging for many women who wish to exercise their constitutional right to terminate a pregnancy in Iowa to do so.” Id. at 268

**WHEREFORE** the Parties request the Court immediately move to protect the status quo of the parties and reverse the district court’s denial of their Motion for a Temporary Injunction below, or alternatively grant

Appellant's Motion for a Temporary Injunction of the 72 hour waiting period and medically unnecessary additional appointment requirement independently pursuant to Iowa R. Civ. Pro. 1.1506 (2).

Respectfully submitted,

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\*Application for admission *pro hac vice* forthcoming